

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ISRAEL POLAK,

Plaintiff,

MEMORANDUM & ORDER
17-CV-1795 (MKB) (PK)

v.

KIRSCHENBAUM & PHILLIPS, P.C.,

Defendant.

MARGO K. BRODIE, United States District Judge:

Plaintiff Israel Polak commenced the above-captioned action against Defendant Kirschenbaum & Phillips, P.C., alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* (“FDCPA”). (Compl., Docket Entry No. 1.) Plaintiff alleges that Defendant’s debt collection letter, stating that the balance due “may vary from day to day, due to interest or other charges,” is deceptive and misleading, violating sections 1692e, 1692f, and 1692g of the FDCPA. (*Id.* ¶¶ 13–20.) On June 20, 2017, Defendant moved to dismiss the Complaint pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. (Def. Mot. to Dismiss (“Def. Mot.”), Docket Entry No. 12.) On August 4, 2017, Plaintiff opposed Defendant’s motion. (Pl. Opp’n to Def. Mot. (“Pl. Opp’n”), Docket Entry No. 15.)

On October 7, 2017, the Court referred Defendant’s motion to Magistrate Judge Peggy Kuo for a report and recommendation. (Order dated Oct. 7, 2017.) By report and recommendation dated February 16, 2018 (the “R&R”), Judge Kuo recommended that Defendant’s motion to dismiss be granted as to the section 1692f claim and denied as to the sections 1692e and 1692g claims. (R&R, Docket Entry No. 18.) No party has objected to the R&R.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's report and recommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court grants Defendant's motion to dismiss as to section 1692f, and denies the motion to dismiss as to sections 1692e and 1692g.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: March 6, 2018
Brooklyn, New York